

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
v.) No.: 3:08-CR-019
)
STEVE FLINT MCCOLLUM)

MEMORANDUM AND ORDER

Acting *pro se*, the defendant has submitted a letter [doc. 30] asking the court to vacate his recently-imposed (and agreed-upon) revocation sentence. In that letter, the defendant primarily addresses the representation he was afforded during the probation revocation process by an attorney in the Federal Public Defender's Office.

It is unclear whether the defendant intended to file a motion to vacate under 28 U.S.C. § 2255, or a Federal Rule of Criminal Procedure 35(a) motion, or some other type of filing. The court will not recharacterize the letter as a § 2255 motion at this time because such a recharacterization carries potentially adverse consequences of which the defendant may be unaware.

In such circumstances the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

See Castro v. United States, 540 U.S. 375, 383 (2003).

Therefore, the Clerk of Court is **DIRECTED** mail the defendant a copy of this order, accompanied by the form which is used to file motions to vacate under § 2255. **No**

later than June 1, 2015, the defendant must either: (1) fill out and return the attached preprinted form motion to signify that, in submitting his letter, he intended to bring a motion to vacate under § 2255; or (2), if he does not choose option (1), he must describe, in writing and in sufficient detail, the specific type of action or motion he is filing and explain the basis upon which the requested relief can be granted. If the defendant does not timely comply with this order, the court will assume that he does not wish to proceed in this matter and will deem his letter [doc. 30] withdrawn.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan

United States District Judge